on "deviations from expected traffic flows" (*id.*). Such reports would be relevant only where a dominant foreign carrier provided these services in correspondence with a U.S. affiliate. They would not apply to foreign dominant carriers that engaged in inbound by-pass through arrangements with unaffiliated U.S. carriers -- the most likely scenario under which inbound by-pass would occur -- or to any activities by foreign non-dominant carriers.

Other existing reporting requirements are also inadequate, as AT&T described in its Comments in the *Settlement Rate Benchmark* proceeding.[67] Reliance upon the annual Section 43.61 reporting process would entail substantial delays in any relief, while there has been little compliance with the Commission's existing traffic reporting requirement for switched services provided over international private lines (*see* NPRM, ¶100, n.96).[68] The introduction of new traffic reporting requirements by the Commission would also impose a major compliance burden upon U.S. carriers and could

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[66] *Benchmark Settlement Rate NPRM*, ¶ 83.

[67] *Id.*, AT&T Comments (filed Feb. 7, 1997), at 37-39.

[68] Carriers authorized to provide these services are required to file traffic reports every six months during the initial three year period after an equivalency finding. *See fONOROLA Corp.*, 9 FCC Rcd. 4066, 4070 (1994) (establishing the filing requirement for the U.S.-Canada route); *ACC Global Corp.*, 9 FCC Rcd. at 6269 (U.S.-U.K. route); *Cable & Wireless, Inc.*, 11 FCC Rcd. at 1772 (U.S.-Sweden route). However, AT&T's research indicates that only 13 of 87 required reports were filed for the U.S.-Canada route in 1994-95, only 18 of 100 required reports were filed for the U.S.-U.K. route in 1994-96, and only 6 of 16 required reports were filed for the U.S.-Sweden route in 1996.

entail the disclosure of competitively sensitive information.[69] Substantial administrative resources would also be required to review reports by multiple carriers on large numbers of routes.

Moreover, where traffic deviations could lead to a possible loss of license, incentives to provide inaccurate or misleading reports would be strong, while such behavior would often be difficult or impossible to detect. For these reasons, AT&T believes that to attempt to address one-way by-pass through such post-entry safeguards would be overly burdensome and would not be successful.

2. The Commission Should Prevent In-Bound By-Pass by Requiring a Cost-Based Settlement Rate, or by Adopting a Similar Approach to That Proposed for Accounting Rate Flexibility Arrangements.

The equivalency test, established for more than five years[70] and reaffirmed less than two years' ago in the *Foreign Carrier Entry Order*,[71] has proven to be a highly effective regulatory tool for recognizing where countries provide sufficient U.S.-outbound by-pass opportunities to U.S. carriers to allow authorization of these in-bound services without harm to the public interest,[72] and where they do not.[73] AT&T,

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69 The UK approach of requiring each carrier to maintain specific inbound-outbound ratios for IPL switched traffic to and from each country does not appear to offer any easy solution. Because a carrier cannot control its inbound traffic, required traffic ratios could not be met without either extended reporting periods or through the extensive use of estimates and adjustments that greatly increase the complexity of the reports and the difficulty of enforcement.

70 *Regulation of International Accounting Rates*, 7 FCC Rcd. 559 (1991).

71 *Foreign Carrier Entry Order*, 11 FCC Rcd. at 3925.

72 *See fONOROLA Corp.*, 7 FCC Rcd. 7312 (1992) (equivalency finding for Canada); *ACC Global Corp.*, 10 FCC Rcd. 6240 (1994) (UK); *Cable & Wireless, Inc.*, 11 FCC

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therefore, supports the NPRM's intention (¶ 59) to retain the equivalency test for non-WTO countries. However, as demonstrated above, reliance upon WTO Member countries' commitments, a high-end benchmark settlement rate condition and post-entry safeguards would provide much less protection against in-bound by-pass than the equivalency test. Unless the Commission imposes a cost-based settlement rate condition, additional safeguards will be required to protect the U.S. market against competitive harm.

AT&T suggests that the Commission adopt a similar approach for these services to that which the NPRM (¶¶ 144-54) proposes for accounting rate flexibility arrangements. Specifically, the Commission should recognize that with switched services provided over private lines, just as with accounting rate flexibility arrangements, "WTO membership alone will not guarantee conditions in a foreign market are sufficiently competitive to prevent foreign carriers with market power from discriminating against U.S. carriers" and that "WTO Member countries that have made weak or no market

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Rcd. 1766 (1996) (Sweden); *Communications TeleSystems International*, File No. ITC-95-444, Memorandum Opinion and Certification (released Dec. 31, 1996) (New Zealand).

[73] *See ACC Global Corp.*, 11 FCC Rcd 10923 (1996) (denying equivalency finding for France and Germany); *Cherry Communications, Inc.*, File No. ITC-96-183, Memorandum Opinion and Order, (released Mar. 31, 1997) (Hong Kong).

access commitments are unlikely to be sufficiently competitive to warrant deviation from the requirements of the ISP." NPRM, ¶ 151.[74]

Accordingly, with switched services provided over international private lines, as with proposed accounting rate flexibility arrangements, "a showing that market conditions in the country in question are not sufficiently competitive to prevent a carrier with market power in that country from discriminating against U.S. carriers," *id.*, should warrant denial of an application. As the NPRM (¶¶ 151-52) further proposes, evidence that the relevant country "has not complied with its . . . commitment, its commitment has not taken effect, or it made no commitment" to provide both (1) market-access, and (2) fair rules of competition as required by the WTO Reference Paper, should be sufficient to make such a showing. The relevant market access required here should be the ability to provide switched services over international private lines.

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[74] In fact, there is no difference in substance between switched services provided over international private lines and the alternative payment arrangements encouraged under the Commission's Phase II, Fourth Report and Order in *Regulation of International Accounting Rates*, CC 90-337, (released Dec. 3, 1996), FCC 96-459 ("*Flexibility Order*"). Both types of arrangements allow the provision of IMTS services without the International Settlements Policy requirements for an equal division of accounting rates, proportionate return of traffic and uniform accounting rates. Indeed, two of the most recently proposed alternative payment arrangements presented to the Commission for approval under the *Flexibility Order* are provisioned with international private lines and are thus identical in all respects to switched services provided over international private lines. *See Primus Telecommunications Group, Inc.*, ISP-97-W-091, Letter dated Apr. 18, 1997, to Mr. Troy Tanner, FCC, from Mr. Neil Hazard, Primus; *Telegroup, Inc.*, ISP-97-PDR-302, Letter dated May 2, 1997 to Mr. Troy Tanner, FCC, from Mitchell F. Brecher Esq. & Robert E. Stup, Jr. Esq.

Once an opposing party makes such a showing, the application should be denied unless rebutted by the requesting party, or unless the requesting party shows that a cost-based settlement rate is available on the relevant route to all U.S. carriers.

V. OTHER STRONGER POST-ENTRY REGULATORY SAFEGUARDS ARE ALSO REQUIRED.

Carriers with market power in foreign markets may favor their U.S. affiliates and disadvantage other U.S. carriers and their customers in many ways. The NPRM (¶ 90) identifies some of the means available to such carriers to raise the costs of their U.S. rivals by manipulating proportionate return (thus providing the carrier's U.S. affiliate with a lower effective settlement rate on the route) or settlements payments, lowering their U.S. rivals' quality of service, misusing proprietary information, or otherwise making anticompetitive use of their termination facilities. As both the Commission and the Department of Justice have found, through such conduct a carrier with market power in a foreign market may raise price and reduce competition in the U.S. market.[75]

The NPRM properly recognizes that broader safeguards than existing dominant carrier regulatory requirements will be required to address these potential harms.[76] As revised in the *Foreign Carrier Entry Order*, the dominant carrier rules

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[75] *Sprint Corp.*, 11 FCC Rcd. 1850, 1860 (1996); *U.S. v. Sprint Corp. & Joint Venture Co.*, 60 Fed. Reg. 44049, 44063 (1995) (Competitive Impact Statement).

[76] The NPRM (¶ 86) correctly proposes to continue the present approach to non-equity relationships between U.S. and foreign carriers. Under this approach, the Commission relies upon its 'no special concessions' requirement and upon application of the dominant carrier rules where such an arrangement with a dominant foreign

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presently govern U.S. market participation by foreign carriers with market power in countries meeting the requirements of the ECO test. If carriers with market power in countries not meeting those requirements were to participate in the U.S. market notwithstanding the concerns expressed here, additional post-entry safeguards would be necessary.

While supporting the overall approach to post-entry safeguards taken by the NPRM, AT&T suggests strengthening the proposed rules by (1) broadening the proposed 'no special concessions' requirement, (2) retaining the need for prior approval of circuit additions and improving the reporting requirements of the basic dominant carrier rules, and (3) imposing strict disclosure and separation obligations and an accelerated complaint procedure as part of the supplemental dominant carrier rules. Additionally, the Commission should ensure that supplemental dominant carrier safeguards apply to all carriers with market power in markets not subject to sufficient competition and regulation to prevent anticompetitive abuse.

Thus, the supplemental safeguards should apply not only where the country at the other end of the affiliated route has not authorized multiple international facilities-based competitors, as the NPRM proposes (¶ 104), but also where foreign ownership restrictions preclude non-national entities from holding controlling interests in facilities-based carriers or where the requirements of the WTO Reference Paper have not been

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carrier is found to present a substantial risk of anticompetitive effects. *See Foreign Carrier Entry Order*, 11 FCC Rcd. at 3909, 3969-70.

implemented in full. As the Commission found in establishing the ECO test, where these requirements are not fulfilled, a carrier retains the ability to leverage its market power. The same analysis and conclusions are equally relevant here in identifying the circumstances in which supplemental dominant carrier rules should apply.

The additional supplemental safeguards that AT&T proposes -- requirements for the full disclosure of all affiliate transactions, the separate operation of the U.S. affiliates of carriers with market power in foreign markets and an accelerated complaint procedure -- are necessary to ensure that carriers with market power in closed foreign markets do not discriminate in favor of their U.S. affiliates or engage in cost misallocation or cross-subsidization. As recognized by the Telecommunications Act of 1996 and the Commission's recent domestic orders implementing that legislation, the entry of U.S. domestic BOC local exchange carriers into competitive, in-region, long-distance markets requires extensive safeguards against such conduct, although such entry may occur only when the BOCs are subject to effective local exchange competition. Post-entry regulatory safeguards against competitive abuse by carriers with market power in closed foreign markets should be no less comprehensive or effective than those governing BOC participation in long-distance markets.

Nor should the Commission adopt the proposal on which the NPRM requests comment (¶ 109) to lift supplemental dominant carrier safeguards where the foreign affiliate offers settlement rates that are at or below the low-end of the benchmark range. Cost-based settlement rates and supplemental dominant carrier safeguards serve <u>separate</u> purposes and the achievement of one does not render the other superfluous. While a cost-based settlement rate will prevent a carrier from using the settlement rate to

engage in price squeezes or one-way by-pass, it will not preclude a carrier with market power in a closed market from otherwise using that bottleneck to raise U.S. carriers' costs or from engaging in cross-subsidization of its U.S. activities from other monopoly operations. As such potential behavior is the result of a closed market rather than an above-cost settlement rate, supplemental safeguards should remain in place until the relevant country implements WTO commitments meeting the requirements of the ECO test as described above.

1. A Clear 'No Special Concessions' Requirement is Required.

AT&T supports the NPRM's proposals (¶¶ 114-118) to limit the 'no special concessions' requirement to arrangements with foreign carriers with market power in facilities or services necessary for the provision of international services[77] and to give greater specificity to that requirement. However, AT&T recommends that the scope of the restriction be clarified to preclude acceptance of exclusive arrangements involving any service from carriers with market power in foreign markets affecting traffic or revenue flows to or from the United States, including, but not limited to, the specific types of arrangements listed in the NPRM's proposed restriction. It should be clear that the scope of prohibited arrangements extends beyond those that might be narrowly characterized as being the proper subject of "operating", "distribution" or "interconnection" agreements.

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[77] However, while non-facilities-based foreign carriers will not possess such market power, AT&T can identify no ready "'bright-line' test" (NPRM ¶ 116) to distinguish foreign facilities-based carriers that possess market power from those that do not. For example, in duopoly markets, or where entry is otherwise limited by law, it is quite possible for a second or third carrier to have market power.

Moreover, as described below, to ensure that the U.S. affiliates of carriers with market power in closed markets do not nonetheless enter into improper arrangements with their foreign carrier affiliates, the supplemental dominant carrier safeguards should require the public disclosure of all affiliate transactions.

2. The Proposed Basic Dominant Carrier Safeguards Should be Strengthened .

The basic dominant carrier safeguards proposed by the NPRM (¶¶ 92-103) are reporting and record maintenance requirements similar to those required under current dominant carrier rules, but requiring notification rather than prior authorization for circuit additions on the affiliate route. While the dominant carriers subject to these basic safeguards would be from countries with multiple international facilities-based competitors (*id.*, ¶ 104), the foreign carriers subject to current dominant carrier rules requiring the prior authorization of circuit additions are from countries meeting the facilities-based competition and regulatory requirements of the ECO test. AT&T, however, believes that a requirement for the notification of each circuit addition or discontinuation on the dominant route specifying the facilities on which the circuit is added or discontinued would be an acceptable and less burdensome substitute for this requirement. A requirement for quarterly notification of such additions, as the NPRM proposes (¶ 96), would not be sufficient.

AT&T supports the proposed continuation of existing requirements for the quarterly filing of traffic and revenue reports on the dominant route (NPRM, ¶ 98-100), but believes that more detailed information should be required. First, the Commission should make clear, as in the conditions imposed in *Sprint Corp.*, that information

concerning originating and terminating traffic should be stated separately.[78] Second, to assist in the detection of the manipulation of proportionate return, the Commission should require quarterly traffic reports to show the number of minutes in each service category for which different settlement rates apply, and to identify separately the minutes included and excluded for proportionate return.[79]

Additionally, as the NPRM's proposes (¶ 103), the Commission should continue the existing dominant carrier requirement for maintaining provisioning and maintenance records of basic network facilities and services obtained from the foreign carrier affiliate, which is an important deterrent to discriminatory behavior. This requirement should include all basic network services and facilities that may be jointly provided with the foreign affiliate.

3. Additional Supplemental Dominant Carrier Safeguards Are Also Required.

The NPRM (¶¶ 104-108) properly concludes that more extensive post-entry regulatory safeguards are required for the U.S. affiliates of foreign carriers with market power in countries that have not authorized multiple international facilities-based competitors. However, the use of this single criterion for the imposition of supplemental dominant carrier rules (*id.*, ¶ 104) would allow many U.S. affiliates of carriers with market power in foreign markets and the ability to discriminate against U.S. carriers to be regulated under the basic dominant carrier rules, rather than the supplemental rules.

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[78] *See Sprint Corp.*, 11 FCC Rcd. at 1873 ("each reported separately and not aggregated").

As recognized both by the requirements of the ECO test and by the NPRM's proposed burden to rebut presumptively lawful flexible arrangements (¶ 152), both international facilities-based competition and fair rules of competition are necessary in the foreign market to limit discrimination by the incumbent carrier. Accordingly, the supplemental dominant carrier rules should apply unless the carrier with market power in the foreign market demonstrates not only that the destination country has authorized multiple facilities-based competitors and does not prohibit non-national entities from holding controlling interests in such carriers, but also that it has implemented in full the requirements of the Reference Paper.

Additional critical safeguards should also be imposed as part of the supplemental dominant carrier rules. In addition to prohibiting exclusive arrangements with the affiliated foreign carrier for the joint marketing of basic services, the steering of customers by the foreign carrier and the use of foreign market customer information,[80] as

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[79] *See U.S. v. Sprint Corp. & Joint Venture Co.*, 1996-1 Trade Cas. (CCH) ¶ 71,300 (D.C.D.C. 1996) (Final Judgment), § II.A(3)(ii).

[80] The NPRM (¶ 106) asks whether a U.S. carrier's use of "foreign market telephone customer information" is subject to Section 222 of the Act and should be subject to any rules the Commission may adopt to implement this provision of the Act. Section 222 of the Act ("Privacy of Customer Information") applies to U.S. carriers, including the U.S. affiliates of foreign carriers. Whether or not Section 222 applies to the foreign carrier's foreign market telephone customer information itself, the Commission clearly has ample authority in order to safeguard the U.S. international market against anticompetitive conduct (e.g., the leveraging of the foreign carrier's customer information by the U.S. affiliate to its advantage over other non-affiliated U.S. carriers) to require the U.S. affiliate to make available on a nondiscriminatory basis any foreign market telephone customer information it obtains from its foreign

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the NPRM proposes (¶ 105), the Commission should require the public disclosure of all affiliated transactions and that the U.S. affiliate operate as a separate and independent entity from the foreign carrier.

The public disclosure of affiliated transactions is necessary to ensure that the foreign carrier does not provide its U.S. affiliate with products or services on a discriminatory basis. The U.S. affiliate should be required to file monthly reports showing the prices, terms and conditions of all products and services provided by its affiliated foreign carrier, including copies of all agreements, settlement rates and the methodology for proportionate return, and details of the provisioning and maintenance of all services and facilities provided, including the types of circuits and services provided, the average time intervals between order and delivery, the number of outages and intervals between fault report and service restoration, and, for circuits used to provide international switched services, the average number of circuit equivalents available to the U.S. affiliate and the percentage of 'busy hour' calls that failed to complete. In order to assist such disclosure, the Commission should require all affiliate transactions to be reduced to writing and such records to be kept as part of the affiliate's obligation to maintain records under the basic dominant carrier rules.

A specific and detailed public disclosure requirement will be essential to ensure that the U.S. affiliates of carriers with market power in foreign markets do not

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carrier affiliate. *See, e.g.*, Section 222 (c)(3) (requiring that where a bottleneck U.S. carrier shares its aggregate customer information with an affiliate, it must provide such information to other carriers on reasonable and nondiscriminatory terms).

benefit from discrimination in violation of the 'no special concessions' requirement. Similar conditions are required by the Commission and the Department of Justice to prevent anticompetitive conduct resulting from the partial acquisition of Sprint by the French and German monopoly carriers.[81] and they will be equally necessary in the event of U.S. market entry by other carriers with market power in closed foreign markets. This proposal does not go as far as the even greater disclosure that is required of affiliate transactions between the BOC local exchange carriers and their interexchange affiliates. There, the Commission requires a detailed written description of the terms and conditions of BOC affiliated transactions to be placed on the Internet within 10 days of the transaction.[82]

Structural separation is also essential. *See* NPRM, ¶¶ 111-13. A requirement that the U.S. affiliate operate separately and independently of the foreign carrier would assist in identifying cost misallocation and the cross-subsidization of the affiliate from the foreign carrier's non-competitive operations in the foreign market. The affiliate should be required to operate as a distinct entity with separate officers, directors and employees, to maintain separate accounting systems and records identifying all payments and transfers from the foreign carrier and to receive no subsidy from the foreign carrier or any investment or payment not recorded as an investment in debt or equity.

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[81] *See Sprint Corp.*, 11 FCC Rcd. at 1873-74; *Sprint Corp. & Joint Venture Co.*, 1996-1 Trade Cas. (CCH) ¶ 71,300, § II.A.5.

[82] *Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, (released Dec. 24, 1996), FCC 96-490, ¶ 122.

While not limiting the inherent ability of the foreign carrier to use an above-cost settlement rate to price squeeze unaffiliated U.S. carriers, such requirements would help reduce the risk of cross-subsidization from non-vertically integrated operations of the foreign carrier. Similar safeguards are required under the Final Judgment in *Sprint Corp.* and by the Commission for the BOC interexchange affiliates.[83] They are equally necessary to limit anticompetitive conduct by carriers with market power in closed foreign markets.

A further necessary requirement is for expedited complaint procedures. The Commission has established expedited 90 day procedures for complaints alleging that any BOC has failed to meet the conditions for in-region interLATA approval.[84] The swift resolution of complaints is no less necessary for carriers with market power in foreign markets, and expedited procedures should also be established here.

4. Improved Filing Procedures Are Required.

The Commission should also amend its procedures for the filing of information required by the basic or supplemental dominant carrier rules or by carrier-specific conditions in Section 214, Section 310(b)(4) and submarine cable authorizations. At present, the review of these materials by interested parties and the public is possible only by obtaining them from the Commission's file room, where the available materials

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[83] *Sprint Corp. & Joint Venture Co.*, 1996-1 Trade Cas. (CCH) ¶ 71,300, Sect. III.F.; *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Rulemaking, FCC 96-489 (released Dec. 23, 1996) ("*Non-Accounting Safeguards Order*"), ¶¶ 158-60.

[84] *See* 47 U.S.C. § 271(d)(6)(B); *Non-Accounting Safeguards Order*, ¶¶ 345-51.

sometimes appear incomplete. To assist such review, AT&T suggests that the Commission require copies of all such materials to be filed with its vendor (currently ITS).

The Commission should also require all such materials to be filed publicly, and to be clearly marked as responsive to the relevant filing requirement.

VI. MARKET CONDITIONS ARE INSUFFICIENTLY COMPETITIVE TO WARRANT ANY PRESUMPTION IN FAVOR OF ACCOUNTING RATE FLEXIBILITY.

The NPRM (¶¶ 144-54) also proposes to modify the regulatory procedures governing accounting rate flexibility arrangements with WTO Member countries. It proposes to establish a rebuttable presumption in favor of accounting rate flexibility arrangements with carriers from all WTO Member countries, but also acknowledges that many of these countries' WTO commitments would not provide the competitive conditions that are necessary to preclude discrimination by carriers with market power.

Yet, even allowing "easy rebuttal" of the presumption would not provide sufficient protection against competitive harm because of the difficulty of obtaining accurate information on foreign regulatory conditions. The Commission should therefore apply a neutral presumption, with the burden of production on the proponent of the arrangement, as the party with superior access to the relevant information. As indicated by the NPRM, the specific WTO commitments required as the threshold test for such arrangements should reflect the requirements of the ECO test -- in accordance with the NPRM's reaffirmation that the standards of the ECO test remain the best indicator of whether foreign market conditions are sufficiently competitive to remove the requirements of the International Settlements Policy.

1. The Commission Should Apply a Neutral Presumption for WTO Member Countries With the Burden of Production on the Proponent.

Based upon the "belie[f] that the commitments to competition and fair regulatory principles in the WTO Basic Telecom Agreement will substantially lessen the ability of foreign carriers with market power to discriminate among U.S. carriers" (¶ 148), the NPRM would establish a "rebuttable presumption" (¶ 150) in favor of allowing flexible arrangements with carriers with all WTO Member countries. Conformity with the ECO test, therefore, would be removed as a threshold requirement for such arrangements (¶ 148), although it would be retained for arrangements with carriers from non-WTO Member countries. (¶ 154)

The NPRM itself acknowledges (¶ 151) that "market conditions in WTO Member countries that have made weak or no market access commitments are unlikely to be sufficiently competitive to warrant deviation from the ISP." As shown in Section I, when the WTO agreement goes into effect next year, the commitments of less than one-fifth of WTO Member countries, accounting for only a third of U.S.-billed IMTS revenues, would meet ECO requirements. This analysis shows that the conditions for effective competition that are necessary to reduce the market power of incumbent carriers will be in place only in a small minority of WTO Member countries in the immediate future. And, almost half of the 130 WTO Member countries will not open their international services markets at all.

Under these circumstances, any general presumption in favor of waiving the International Settlements Policy for all WTO Member countries and allowing flexible arrangements would be greatly misplaced. Such presumption is neither required under

WTO rules, as described in Section II, nor warranted by market conditions. Nothing in the NPRM indicates a different conclusion and, as discussed in Section II, a neutral presumption would be equally consistent with GATS.

The ability to rebut the presumption by showing that market conditions in the relevant country are not sufficiently competitive to preclude discrimination by a carrier with market power, as proposed by the NPRM (¶ 151), would not be sufficient to ensure that such conduct would not occur. While the NPRM correctly indicates (¶¶ 151-52) that the necessary market conditions must include both open market entry and the existence of fair rules of competition, the Commission, by requiring that opposing parties must show the absence of these conditions, would impose a very difficult and costly burden on those seeking to ensure that the U.S. market would not suffer competitive harm. Obtaining detailed information about telecommunications law and regulation in many foreign countries is frequently exceptionally difficult, even for U.S. carriers with in-country representation.

The burden should rather be placed on the party with the best access to the relevant information, i.e., the proponent of the arrangement. AT&T, therefore, proposes that flexible arrangements with carriers from WTO countries should be determined under a neutral standard, with no presumption in favor of either party, but with the proponent of the arrangement carrying the burden of production of evidence that the relevant country is sufficiently competitive to preclude discrimination by a carrier with market power.

2. The Relevant WTO Commitments Should Meet the Requirements of the ECO Test.

The NPRM (¶ 151) would allow the presumption in favor of flexible arrangements with WTO Member countries to be rebutted by a showing that the relevant country has failed to implement WTO commitments providing "market access" and "fair rules of competition, such as those contained in the Reference Paper." The Commission thus acknowledges that the market conditions required to allow deviation from the ISP are essentially those required under the ECO test.

To remove any ambiguity concerning the "market access" that should be available in the foreign market to allow flexible arrangements, the Commission should clarify that proponents of flexible arrangements should demonstrate that the relevant country has implemented WTO commitments (1) to provide unrestricted market access for the provision of basic international facilities-based services, including switched voice services and allowing both the cross-border and commercial presence modes of supply, (2) to allow the foreign ownership of controlling interests in basic international facilities-based carriers, and (3) to meet the requirements of the GATS Reference Paper. These requirements meet the standards required under the ECO test, which is presently the threshold test for accounting rate flexibility and would continue to perform this function for non-WTO countries. NPRM, ¶154.

Such a threshold test remains equally necessary for WTO countries, as the NPRM (¶152) recognizes by proposing that the presumption would be "easily rebutted" by showing the absence of these conditions. The NPRM reaffirms (¶ 154) that "the ECO test provides the best showing of whether the legal, regulatory and economic conditions in

a foreign market support competition such that the ISP is no longer necessary to protect against abuse of market power by foreign carriers." That is as much the case for WTO Member countries as for non-WTO Member countries.[85]

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[85] If the NPRM's proposed presumption in favor of accounting rate flexibility arrangements with WTO Member countries is adopted notwithstanding AT&T's concerns, the Commission should clarify how it would operate in conjunction with the safeguards applicable to flexible arrangements that the Commission does not propose to change. NPRM, ¶ 145, n.139. In particular, the Commission should make clear where the burden would lie with respect to arrangements affecting more than 25 percent of the traffic on a route.

CONCLUSION

For the reasons explained above, the Commission should refrain from relaxing existing entry standards except as suggested herein, unless it requires the adoption of cost-based settlement rates for all types of switched services, including outbound switched resale, provided on affiliated routes. The Commission should also strengthen its proposed dominant carrier rules, adopt a neutral presumption for flexible accounting rate ararangements, and adopt the other measures described above.

Respectfully submitted,

AT&T CORP.

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Dated: July 9, 1997

ATTACHMENT 1

GATS OFFERS THAT MEET ECO TEST REQUIREMENTS

COUNTRY	SUMMARY: MEETS ECO TEST	WILL ALLOW INTERNATIONAL FACILITIES-BASED SERVICES	WILL ALLOW FOREIGN CONTROL OF FACILITIES-BASED OPERATORS	ENDORSES RELEVANT PARTS OF REFERENCE PAPER *
Antigua/Barbuda	2012	2012	Yes--2012	Yes
Argentina	November 2000	November 2000	Yes--11/00	Yes
Australia	**January 1, 1998**, pending legislation	1/1/98, pending legislation	Yes--limits only for Telstra, Optus, Vodafone	Yes
Bangladesh		No	Yes, but no national treatment	Yes (pending review)
Belize		No	No commitment	Yes
Bolivia		11/27/01	Yes--after 11/27/01	No
Brazil		Legislation + 1 year (1998-9)	No commitment	Yes (future)
Brunei		Duopoly; review in 2010	No limit, but duopoly	Yes
Bulgaria	2005	2005	Yes--2005	Yes
Canada		11/98; routing restrictions apply until 1/1/00	No	Yes
Chile	**January 1, 1998**	1/1/98	Yes	Yes
Colombia		1/1/98; number of operators limited by economic need	Yes	Yes
Czech Republic	2001	2001	Yes--2001	Yes
Dominica		No	Yes	Yes
Dominican Republic	**January 1, 1998**	1/1/98	Yes, but no commitment for national treatment	Yes
Ecuador		No commitment	No commitment	No commitment
El Salvador	**January 1, 1998**	1/1/98	Yes	Yes
European Union				
Austria	**January 1, 1998**	1/1/98	Yes	Yes
Belgium	**January 1, 1998**	1/1/98	Yes—limits only on TO	Yes
Denmark	**January 1, 1998**	1/1/98	Yes	Yes
Finland	**January 1, 1998**	1/1/98	Yes	Yes
France	**January 1, 1998**	1/1/98	Yes, except TO--unlimited indirect	Yes
Germany	**January 1, 1998**	1/1/98	Yes	Yes
Greece	2003 (pending request)	2003 (pending request)	Yes--2003	Yes
Ireland	2000	2000	Yes--2000	Yes
Italy	**January 1, 1998**	1/1/98	Yes—limits only on TO	Yes
Luxembourg	2000 (pending request)	2000 (pending request)	Yes	Yes
Netherlands	**January 1, 1998**	1/1/98	Yes	Yes
Portugal		7/99	Not for non-EU ownership	Yes
Spain	December 1998	12/98	Limits only on TO—12/98	Yes
Sweden	**January 1, 1998**	1/1/98	Yes	Yes
United Kingdom	**January 1, 1998**	1/1/98	Yes	Yes
Ghana		No; review in 2002	Yes--JV required	Yes
Grenada	2006	2006	Yes--2006	Yes

COUNTRY	SUMMARY: MEETS ECO TEST	WILL ALLOW INTERNATIONAL FACILITIES-BASED SERVICES	WILL ALLOW FOREIGN CONTROL OF FACILITIES-BASED OPERATORS	ENDORSES RELEVANT PARTS OF REFERENCE PAPER *
Guatemala	**January 1, 1998**	1/1/98	Yes	Yes
Hong Kong		No commitment	Yes	Yes
Hungary	2003	2003	Yes--2003	Yes
Iceland	**January 1, 1998**	1/1/98	Yes	Yes
India		No; review in 2004	No	No
Indonesia		No; review in 2006	No	Yes
Israel		No; review in 2002	Yes	Yes
Ivory Coast	2007	2007	Yes--2007	Yes
Jamaica	September 2013	9/13	Yes--9/13	Yes
Japan	**January 1, 1998**	1/1/98	Limits only on NTT/KDD	Yes
Korea		1/1/98	No	Yes
Malaysia		Stock in existing operators	No	No
Mauritius	2004	2004	Yes	Yes (future)
Mexico		1/1/98	No	Yes
Morocco		2002, pending legislation	No commitment	No
New Zealand	**January 1, 1998**	1/1/98	Limits only on TO	Yes
Norway	**January 1, 1998**	1/1/98	Yes	Yes
Pakistan		2004	Yes--2004, but no commitment for national treatment	No
Papua New Guinea		No; review 2000	No commitment	Yes
Peru	June 1999	6/99	Yes—6/99	Yes
Philippines		1/1/98	No	No
Poland		2003	No	Yes
Romania	2003	2003	Yes--2003	Yes
Senegal	2004-2007	2004-2007; review after 2003	Yes--2004-2007	Yes
Singapore	2000	2000	Yes--2000	Yes
Slovak Republic	2003	2003	Yes--2003	Yes
South Africa		No (⇨ duopoly in 2004)	No	Yes
Sri Lanka		No (⇨ duopoly in 2000)	No	Yes
Switzerland	**January 1, 1998,** pending legislation	1/1/98 pending legislation	Yes--1/1/98, pending legislation	Yes
Thailand		2006, pending legislation	No	Yes (future)
Trinidad/Tobago		2010	No	Yes
Tunisia		No commitment	No	No commitment
Turkey		2006, pending legislation	No	No
Venezuela		11/00	Yes--11/00	No

* These are the sections that cover competitive safeguards, interconnection and independent regulators

SOURCE: Communications from Members to the World Trade Organization, Group on Basic Telecommunications

ATTACHMENT 2

GATS OFFERS THAT MEET EQUIVALENCY TEST REQUIREMENTS

COUNTRY	SUMMARY: IF/WHEN MEETS EQUIVALENCY TEST	OFFER ON CROSS-BORDER SERVICES	OTHER RESTRICTIONS	ENDORSEMENT OF RELEVANT PARTS OF REFERENCE PAPER *
Antigua/Barbuda	2012	No limits	No bypass of TO until 2012	Yes
Argentina	After November 8, 2000	No limits after 11/8/00		Yes
Australia	**January 1, 1998**	No limits		Yes
Bangladesh	No		No bypass of TO network	Yes (pending review)
Belize	No		Bypass of monopoly TO not permitted	Yes
Bolivia	No	No limits		No
Brazil	~ 1999	No limits		Yes (future)
Brunei	**January 1, 1998**	No limits		Yes
Bulgaria	No	TO monopoly for public voice telephony until 12/31/02	IPL resale not permitted	Yes
Canada	**January 1, 1998**	No limits		Yes
Chile	**January 1, 1998**	No limits		Yes
Colombia	**January 1, 1998**	No limits		Yes
Czech Republic	2001	No limits after 2000	No IPL/PSN interconnection until 2001	Yes
Dominica	No		Bypass of monopoly TO not permitted	Yes
Dominican Republic	No	No commitment		Yes
Ecuador	No	No commitment		No commitment
El Salvador	**January 1, 1998**	No limits		Yes
European Union				
Austria	**January 1, 1998**	No limits		Yes
Belgium	**January 1, 1998**	No limits		Yes
Denmark	**January 1, 1998**	No limits		Yes
Finland	**January 1, 1998**	No limits		Yes
France	**January 1, 1998**	No limits		Yes
Germany	**January 1, 1998**	No limits		Yes
Greece	2003	No limits from 1/1/2003		Yes
Ireland	2000	No limits from 1/1/2000		Yes
Italy	**January 1, 1998**	No limits		Yes
Luxembourg	**January 1, 1998**	No limits		Yes
Netherlands	**January 1, 1998**	No limits		Yes
Portugal	2000	No limits from 1/1/2000		Yes
Spain	December 1998	No limits from 11/30/98		Yes
Sweden	**January 1, 1998**	No limits		Yes
United Kingdom	**January 1, 1998**	No limits		Yes
Ghana	No		Bypass of duopoly providers not permitted	Yes
Grenada	2006		Bypass of monopoly TO not permitted until 2006	Yes
Guatemala	**January 1, 1998**	No limits		Yes

COUNTRY	SUMMARY: IF/WHEN MEETS EQUIVALENCY TEST	OFFER ON CROSS-BORDER SERVICES	OTHER RESTRICTIONS	ENDORSEMENT OF RELEVANT PARTS OF REFERENCE PAPER *
Hong Kong	No	No limits "other than: public external [international] telephone service is not allowed"		Yes
Hungary	No		Bypass not allowed	Yes
Iceland	**January 1, 1998**	No limits		Yes
India	No	No commitment	IPL resale not allowed	No
Indonesia	No	Only through networks of PT Indosat and PT Satelindo		Yes
Israel	No	Only through networks of three international operators		Yes
Ivory Coast	**January 1, 1998**	No limits		Yes
Jamaica	September 2013		No bypass of monopoly TO until 9/13	Yes
Japan	**January 1, 1998**	No limits		Yes
Korea	January 1, 1999	No limits	No foreign ownership of IPL resellers before 1/1/99 (49% limit 99-00; no limits from 1/1/01)	Yes
Malaysia	No	No limits		No
Mauritius	2004	Monopoly until 2004		Yes (future)
Mexico	**January 1, 1998**	No limits		Yes
Morocco	No	"Possible" on TO network		No
New Zealand	**January 1, 1998**	No limits		Yes
Norway	**January 1, 1998**	No limits		Yes
Pakistan	No		No bypass of monopoly TO until 2004	No
Papua New Guinea	No	Only through TO network		Yes
Peru	June 1999	6/99	No IPL resale before 6/99	Yes
Philippines	No	No commitment	Resale of IPLs not allowed	No
Poland	2003	No foreign-owned facilities or service until 2003		Yes
Romania	2003		No bypass of monopoly TO until 2003	Yes
Senegal	No	Monopoly until 2004-2007, then review		Yes
Singapore	No		IPL/PSN interconnection not permitted	Yes
Slovak Republic	2003	Monopoly until 2003	No IPL/PSN interconnection until 2003	Yes
South Africa	No	Monopoly until 2004; then duopoly		Yes
Sri Lanka	No	Monopoly until 2000, then duopoly		Yes
Switzerland	**January 1, 1998**	No limits		Yes
Thailand	2006	2006		Yes (future)
Trinidad/Tobago	2010		No bypass of monopoly TO until 2010	Yes
Tunisia	No	No commitment		No commitment
Turkey	No	2006		No
Venezuela	No	11/00		No

* These are the sections that cover competitive safeguards, interconnection and independent regulators

SOURCE: Communications from members to the World Trade Organization, Group on Basic Telecommunications

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Rules and Policies on	)	IB-Docket
Foreign Participation in	)	No. 97-142
the U.S. Telecommunications Market	)	
	)	

AFFIDAVIT

OF

WILLIAM H. LEHR

ON BEHALF OF

AT&T CORP.

ATTACHMENT # 3